empt from civil liability by virtue of his office. This principle was clearly enunciated by Holt, C. J., in *Lane* v. *Cotton* (1701) 1 Salk. 17, and established in the English law in *Ashby* v. *White* (1703) 2 Ld. Raym. 938; and has been followed in the United States. *Beardslee* v. *Dodge* (1894) 143 N. Y. 160, 38 N. E. 205; *Tracy & Balestier* v. *Swartwout* (1836) 35 U. S. 80; *Kelly* v. *Bemis* (1855) 70 Mass. 83. The common-law privilege of judicial officers, *Randall* v. *Brigham* (1868) 74 U. S. 523, does not apply where, as in the principal case, the act was ministerial, and purity of motive is immaterial. *Houghton* v. *Swarthout* (N. Y. 1845) 1 Den. 589; *Amy* v. *The Supervisors* (1870) 78 U. S. 136; but see *People ex rel. Walker* v. *Ahearn* (1910) 139 App. Div. 88, 94, 12 N. Y. Supp. 845, *aff'd People ex rel. Walker* v. *McAneny* (1911) 202 N. Y. 551, 95 N. E. 1137.

USURY—MORTGAGES—TIME FOR SETTING UP DEFENSE.—Under a statute causing a forfeiture of all interest in an usurious transaction, a mortgagor, on the theory that the interest previously paid should be applied toward the discharge of the principal indebtedness, sought either to have the mortgage and foreclosure deed cancelled, or to redeem in case not fully paid, where the mortgagee himself had bought in the property at a regular foreclosure sale. *Held,* two judges dissenting, that he could do neither. *Jones* v. *Meriwether* (Ala. 1919) 82 So. 185.

Usury statutes, broadly, are of two kinds, (1) those making the entire transaction void, Gen. Bus. Law §373, N. Y. Consol. Laws c. 20 (Laws of 1909 c. 25) §373, and (2) those entailing a forfeiture of interest, either all, Alabama, Code 1907 §4623, or the illegal portion, Ky. Stat. (Carroll 1915) §2219. Under the former kind of statute, where a loan has been made at an usurious rate and a mortgage given, foreclosure will be enjoined without a tender of the amount due. *Kaufman* v. *Schwartz* (1916) 174 App. Div. 239, 160 N. Y. Supp. 1056 (chattel mortgage). Under the latter sort the sale will not be enjoined unless there is a tender of the principal plus legal interest, although all interest is declared forfeited, *Lindsay* v. *U. S. Savings & Loan Co.* (1899) 127 Ala. 366, 28 So. 171, except where there is a clear statutory provision to the contrary. *Barclift* v. *Fields* (1906) 145 Ala. 264, 41 So. 84. But in any case, the restraint will be only *"pro tanto,"* see *Powell* v. *Hopkins* (1872) 38 Md. 1, 13. At foreclosure, though, the amount of excess paid may be applied as a set off; *Harbison* v. *Houghton* (1866) 41 Ill. 522, 627; *Pond* v. *Causdell* (1872) 23 N. J. Eq. 181; *Ward* v. *Sharp* (1843) 15 Vt. 115; or usury may be pleaded as a defense, *Holm* v. *First National Bank* (1901) 15 S. D. 75, 87 N. W. 526. After foreclosure, a distinction is drawn in those jurisdictions wherein usury voids the transaction and those in which interest is forfeited. In the former, the mortgage, mortgage sale, and notes may be avoided, *Scott* v. *Austin* (1887) 36 Minn. 460, 32 N. W. 89 and 864, except where the property has been sold to an innocent purchaser for value,

Jackson v. *Henry* (N. Y. 1813) 10 Johns. 185. In the latter, the mortgagor may not attack the foreclosure proceedings or redeem, although the property has been bought by the mortgagee, *Tyler* v. *Mass. Mutual Ins. Co.* (1883) 108 Ill. 58, nor can any interest already paid be recovered, *Perkins* v. *Conant* (1862) 29 Ill. 184. The reason is that, since usury is but a defence in such case, and the right of the mortgagee to purchase at foreclosure unquestioned (where so provided in the mortgage agreement), it does not lie in the plaintiff's mouth to use that as a reason to ask equity to move which might very well have been employed previously either as a defense or as a cause of equitable interference.

WILLS—WORDS OF SURVIVORSHIP—TO WHAT PERIOD REFERRED.—Property was devised by the testatrix to her husband and children with the provision that the husband should inherit the children's share if they died before him. *Held,* three judges dissenting, that the two children who survived the testatrix took an indefeasible fee in their share, the period of survivorship being restricted to the lifetime of the testatrix. *Haigler* v. *Haigler* (Ala. 1919) 80 So. 864.

A devise of property to one with a limitation over simply "in case of death" or "if he die" gives the devisee an indefeasible estate if he survives the testator, *Marvel* v. *Wilmington Trust Co.* (Del. 1913) 87 Atl. 1014; *Renner* v. *Williams* (1905) 71 Ohio St. 335, 73 N. E. 221, for the reason that it would be absurd to speak of vesting an estate absolutely subject to be divested "in case of death", an event certain to occur. See *O'Mahoney* v. *Burdett* (1874) L. R. 7 H. L. 388, 395. Where the limitation over is in case of death coupled with some contingency, such as "dying under age" or "without children" or "in the lifetime of another", the event is no longer certain to occur. In such a case the courts must construe each will individually to ascertain whether or not the testator intended to give effect to the limitation over if the contingency happened after his death. "No will has a brother", and so we find some courts divesting the estate if the contingency happens after the testator's death, *Carpenter* v. *Sangamon Loan & Trust Co.* (1907) 229 Ill. 486, 82 N. E. 418; *Britton* v. *Thornton* (1884) 112 U. S. 526, 5 Sup. Ct. 291; *cf. Meins* v. *Pease* (1911) 208 Mass. 478, 94 N. E. 845, while other courts restrict the period of survivorship under the identical circumstances to the testator's death. *In re Geissler* (1902) 72 App. Div. 85, 76 N. Y. Supp. 100; *Burleson* v. *Mays* (1914) 189 Ala. 107, 66 So. 36. The children in the principal case took a vested estate in fee upon the death of the testatrix. The courts favor an absolute as against a defeasible estate and will not cut down the estate unless the intention of the testator to do so is expressed with reasonable clearness. *Pitts* v. *Campbell* (1911) 173 Ala. 604, 55 So. 500; *Banzer* v. *Banzer* (1898) 156 N. Y. 429, 51 N. E. 291; *Hordern* v. *Hordern* (1908) 25 T. L. R. 185. The court in the instant case interpreted the limitation over as if it were "in case of the death of my children, my husband shall inherit their share," thus putting the prin-